IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8802 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DILIPBHAI DAMODARDAS PANDYA

Versus

REVENUE INSPECTION COMMR

Appearance:

1. Special Civil Application No. 8802 of 1990

MRS KETTY A MEHTA for Petitioner No. 1

MR. UDAY R. BHATT for Respondent No. 1

CORAM : MR.JUSTICE N.G.NANDI

Date of decision: 17/04/2003

ORAL JUDGEMENT

1. By this writ petition under Article 226 of the Constitution of India, the petitioner, an employee of the Revenue Department of the respondent State Government prays for a declaration that the Circular dated 15-3-1990 (Annexure-C) is ultra vires in so far as it is not made applicable to those examinees who attempted to answer the

questions mentioned therein, with a direction to the respondent to consider the petitioner being successful candidate in Higher Revenue Qualifying Examination held in the year 1988.

2. Briefly the say of the petitioner is that the petitioner joined the services of the State of Gujarat in Revenue Department as Clerk and was promoted as Dy. Mamlatdar in course of time and he successfully passed the Lower Revenue Qualifying Examination; that the petitioner in order to became eligible for promotion to the post of Mamlatdar in the Revenue service of the State of Gujarat, was required to pass Higher Revenue Qualifying Examination under the Higher Revenue Qualification Examination Rules, 1980; that the Petitioner appeared in the said examination held in 1988, and the result of the successful and unsuccessful candidates was declared by the respondent. The petitioner's name was shown at Sr. No. 24 and was declared failed/unsuccessful, he having secured less than 50 marks i.e. 48 marks and 47 marks (in paper No. 4 & 5) respectively.

It is further contended that the petitioner is entitled to 5 grace marks per question for out of syllabus question in as much as question paper No.4 & 5 included 3 questions and one question respectively beyond the syllabus. That, respondent Government vide Circular dated 15-3-1990 of the Revenue Department decided to give 5 marks as grace marks for each such question; that in paper No.4, 3 questions were out of syllabus and therefore 15 marks were decided to be given as grace marks, whereas in question paper no.5 one question was out of syllabus and therefore 5 marks are declared to be given as grace marks; that the circular provides that the candidate who did not attempt the questions which were beyond syllabus would be given 5 marks by way of grace for each of such questions, i.e. 15 marks in paper no.4 and 5 marks in paper no.5. The petitioner attempted all the questions which were beyond syllabus in both the papers and the petitioner has not been given grace marks as he attempted the questions which were beyond the syllabus.

3. The respondent has filed affidavit-in-reply contending that the petitioner has passed the examination in September 1991 and hence the petition does not survive. This is the only contention taken in the affidavit in reply.

4. In the present petition the petitioner has

challenged the part of the circular dated 15-3-1990 which provides that the candidate who has not obtained any mark in such questions which are out of syllabus, would get grace mark. Thus it would be seen that an attempt to answer the question which is beyond the syllabus would disentitle a candidate/examinee from getting grace marks. It is this part of the circular dated 15-3-1990 Annexure-'C' which is challenged in the present petition contending that an attempt to answer a question which is beyond syllabus cannot disentitle a candidate to grace marks in as much as the candidate who does not even attempt to answer questions beyond syllabus would be getting the grace marks which is discriminatory against the principle of equal treatment to similarly placed examinees/ candidates.

5. It is submitted by Mrs. Mehta, learned advocate that the petitioner appeared in the Higher Revenue Qualifying Examination held in the year 1988. The petitioner was declared unsuccessful as suggested from page-15, whereby the petitioner is shown to have obtained marks 50, 54, 50, 48, 37 which was corrected as 47 on reassessment, 50 and 53 in paper No. 1 to 7 respectively.

6. The circular dated 15-3-1990 is produced as Annexure-C. The portion of Circular dated 15-3-1990 which is impugned in the present petition, in English would read; sub para - "A candidate who has in these questions not obtained any mark, in case of such candidate, marks as above mentioned are added. "

It will be seen from the above referred impugned portion of the circular that those candidates who did not obtain any marks in the questions which were beyond syllabus would be given grace marks as shown in the table, i.e.. 5 marks each for 3 questions in paper no.4 and 5 marks for one question in paper no.5, which were beyond the syllabus. Thus the circular is made applicable only to those candidates who did not attempt to answer the questions which were beyond syllabus and those candidates who attempted to answer the questions which were beyond the syllabus would not be entitled to the addition/benefit of grace marks as stated in the circular. It would be nothing but penalising a candidate who attempted to answer the questions which were beyond the syllabus and it would be a premium to those candidates who did not even attempt to answer the questions which were beyond the syllabus. The object in giving additional/ grace marks is that the examinee does not suffer because of the inclusion of questions beyond

syllabus in the question papers. The circular cannot deprive a candidate/ examinee of the grace marks simply because he or she attempts to answer questions which were beyond the syllabus. The circular must have a uniform application to all candidates when it seeks to redress the wrong/ improper inclusion of certain questions in the question papers, irrespective of whether the questions are attempted or not attempted. An attempt to answer a question wrongly/ improperly included cannot take away the benefit of grace marks decided to be given because the questions included in the question papers in fact ought not to have been in the question papers at all, and those who do not attempt the questions cannot stand to gain advantage by getting additional/ grace marks for such questions over those who attempt to answer the questions and lose the advantage of additional/ grace marks.

7. The circular dated 15-3-1990 giving additional/ grace marks of 5 per question has to be made uniformly applicable to all the examinees irrespective of whether the questions are attempted or not by the examinees and for this reason the part of the circular which discriminates the examinees who attempted question and those who did not attempt the questions is required to be quashed as ultra vires, since the circular can not discriminate between the examinees who attempted such questions and those who did not attempt such questions in as much as it is lacking in equality of treatment to all the examinees in relation to the questions beyond syllabus and the grace marks of 5 per questions have been decided to be given to redress the wrong i.e. the inclusion of questions out of syllabus.

8. In the result the part of the circular dated 15-3-1990 which excludes applicability of the said circular to the examinees who attempted such questions, namely not granting additional/ grace marks of 5 per question for the questions out of syllabus is declared as ultra vires and set aside and the circular dated 15-3-1990 will have a uniform application to all the examinees irrespective of whether the questions beyond syllabus attempted or not.

9. It, therefore, follows from the above that the petitioner would be entitled to grace marks as per the Circular dated 15-3-1990 in respect of the questions beyond syllabus in Paper No. 4 and 5 respectively and as the consequence thereof, the Petitioner stands successful in the Higher Revenue Qualifying Examination held in 1988; and the petitioner would also be entitled to all

consequential notional benefits. Petition disposed of accordingly. Rule made absolute. No order as to costs.

Dt: 17-4-2003 (N.G. Nandi, J)